

CASE NO. 29-RC-172410

REQUEST FOR REVIEW

EXHIBIT B-1

**(SUPPLEMENTAL REPORT ON
CHALLENGES CASE NO. 29-RC-172398)**

NEW YORK METHODIST HOSPITAL AND
MSO OF KINGS COUNTY, LLC,
A SINGLE EMPLOYER

and

1199 SEIU, UNITED HEALTHCARE
WORKERS EAST

All dates hereinafter are in 2016 unless otherwise indicated.

clerical employee bargaining unit currently represented by the Petitioner, and it would bargain for those employees as part of that unit. If a majority of the valid votes cast were against representation, the employees would be deemed to have indicated their desire to remain unrepresented, and a certification of results would be issued.

Voting Group B:

All full-time and regular part-time clinical assistants (LPNs) and hyperbaric technologists employed by the Employer at its Wound Care and Hyperbaric Center located at One Prospect Park West, Brooklyn, New York, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

The Decision and Direction of Election indicated that if a majority of the valid ballots in the election were cast for the Petitioner, the employees in the above appropriate voting group would be deemed to have indicated their desire to be included in the existing technical employee bargaining unit currently represented by the Petitioner, and it would bargain for those employees as part of that unit. If a majority of the valid votes cast were against representation, the employees would be deemed to have indicated their desire to remain unrepresented, and a certification of results would be issued.

The Tallies of Ballots made available to the parties at the conclusion of the election pursuant to the Board's Rules and Regulations, showed the following results:

Voting Group A:

Approximate number of eligible voters	1
Number of void ballots	0
Number of ballots cast for the Petitioner	
Number of votes cast against participating labor organization	
Number of valid votes counted	0
Number of challenged ballots	1
Number of valid votes counted plus challenged ballots	1

Challenges are sufficient in number to affect the results of the election.

The Employer challenged the ballot of Damarys Rodriguez on the ground that she was the only employee in the unit.

Voting Group B:

Approximate number of eligible voters	4
Number of void ballots	0
Number of ballots cast for the Petitioner	3
Number of votes cast against participating labor organization	1
Number of valid votes counted	4
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	4

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted have been cast for Petitioner.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the challenge to Damaris Rodriguez's eligibility during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

The Challenge to Damaris Rodriguez's Ballot

The Employer challenged the ballot of Damaris Rodriguez, the only employee on the voter list for Voting Group A, on the ground that she is the only employee in the unit. The Petitioner asserts that this challenge is without merit because this is a residual unit and the single employee in the voting unit will be included in a larger, existing unit.

The Employer correctly states that the Board will not certify a stable, single employee unit. See Mount St. Josephs Home for Girls, 229 NLRB 251 (1977) (in which the Board stated that it is contrary to Board policy to certify a stable one person unit). However, in a self-determination election such as this one, the petitioned-for employees

need not constitute an appropriate unit standing alone in order to be added to an existing appropriate unit. See St. Vincent Charity Medical Center, 357 NLRB No. 79 (2011); Warner-Lambert Co., 298 NLRB 993 (1990). The Board has specifically found that a voting group of one employee is permissible in a self-determination election inasmuch as the certified bargaining unit would be more than a one employee unit. See Unisys Corp., 354 NLRB 825 (2009); Chrysler Corporation, 194 NLRB 183, 183 fn. 4 (1971). In this case, should the Petitioner win, Rodriguez would not comprise a stable one-person unit, but rather would be included in the larger clerical unit already represented by the Petitioner.

The Employer argues that Voting Group A is not an appropriate unit for purposes of collective bargaining. Specifically, the Employer argues that including Rodriguez in the existing clerical unit would disenfranchise a registered nurse who “works alongside” Rodriguez and therefore effectively exclude a single employee from the unit. The Employer also argues that Rodriguez does not share a community of interest with the clerical employees in the existing bargaining unit. In doing so, the Employer seeks to raise issues properly included in a Request for Review of the Decision and Direction of Election in the guise of a challenge. The Employer may file its Request for Review with the Board, but may not relitigate the appropriateness of the unit in this challenge proceeding.

Accordingly, I overrule the Employer’s challenge to Rodriguez’s ballot and direct that Rodriguez’s ballot be opened and counted on Thursday, June 30, 2016, at 10:00 a.m. at the Regional Office.

Request for Review

Pursuant to Section 102.69 (c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., a Request for Review of this Decision. This Request for Review must conform with the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by Washington not later than fourteen days from the date of the final decision and/or certification of the Regional Director in this case.

A Request for Review may be E-Filed through the Agency's website, but may not be filed by facsimile. To E-File the Request for Review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a Request for Review must serve a copy on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the Request for Review.

Dated at Brooklyn, New York, on this June 27, 2016.



James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
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Brooklyn, New York 11201

